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## Thorsteinsson v. M/V Drangur United States Court of Appeals, Eleventh Circuit, 16 January 1990 891 F.2d 1547

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**THORSTEINSSON v. M/V DRANGUR**  
**United States Court of Appeals, Eleventh Circuit, 16 January 1990**  
**891 F.2d 1547**

**The seizure of a vessel is imperative for in rem jurisdiction proceedings to satisfy the Fifth Amendment due process requirement, regarding notice and protection of those with an interest in such admiralty matters.**

**FACTS:** In late 1987, claims were filed by several Icelandic creditors against the M/V Drangur (Drangur). The claims were filed in Akureyri, Iceland, the same district as that of the vessel's port of registry. This similarity gave the Icelandic court specific jurisdiction in admiralty based on constructive possession. Accordingly, under the laws of Iceland, there was no need for the arrest of the vessel. The original owner of the vessel was Drangur Inc., an Icelandic flag corporation. The management of the vessel was delegated to Vikur Shipping (Vikur), an Icelandic entity, which further delegated the operations to its American subsidiary, Vikur Shipping U.S.A. (Vikur U.S.A.) Notice of the pending suit was conveyed to the owners, registered mortgage holders, and other lienholders known to the court.

The Drangur was purchased at a judicial sale in Iceland on November 27, 1987. Utvegsbanki Islands HF (Utvegsbanki), as highest bidder, secured a bill of sale issued by the Icelandic court on December 18, 1987. Neither the auction nor the bill of sale was protested. Therefore, after the required time period had elapsed, specified by the laws of Iceland as three months from the date of issuance of the bill of sale, title to the Drangur passed to Utvegsbanki free and clear of all liens and encumbrances.

Plaintiffs-appellants, Havadsson and Thorsteinsson (crew members aboard the Drangur), brought action in U.S. District Court for the Southern District of Florida. The suit was brought in rem asserting various maritime liens against the Drangur and in personam against Vikur U.S.A. on the same claims. Havadsson is a citizen and resident of Iceland; Thorsteinsson is a citizen of Iceland and the United States, and a resident of the U.S.. The seamen's claims pertain to unsettled wages, personal expenditures made in interest of the Drangur, repatriation costs for Havadsson, and medical expenses incurred by Thorsteinsson while under the employ of Vikur. On February 25, 1988 a warrant of arrest in rem was issued by the district court, and on February 26, 1988, the Drangur was seized.

Utvegsbanki submitted a Claim of Owner with the court on February 29, 1988, and posted a cash bond to procure the vessel's release. As owner, Utvegsbanki answered the complaint, first alleging that it purchased the vessel free and clear of all liens. Second, they stated the plaintiffs-appellants' claims were barred by gross laches. Finally, Utvegsbanki moved for summary judgment.

The Plaintiffs-appellants, in opposition, first contended that the judicial sale in Iceland lacked sufficient due process. Second, they asserted that all rights and obligations except mortgages are left intact after the sale. Lastly, the plaintiffs-appellants state they were not at fault as to laches.

Due to the plaintiffs-appellants' failure to present to the court proof that the judicial sale of the vessel lacked due process, the District Court entered final summary judgment in favor of defendants-appellees.

**ISSUES:** (1) Whether it is necessary for the Icelandic Court to seize the M/V Drangur in order to establish in rem jurisdiction?

(2) Whether the District Court erred in assigning the burden of proof to the plaintiffs-appellants regarding the defendants-appellees affirmative defense, that the laws of Iceland govern the case?

**ANALYSIS:** The Court of Appeals for the Eleventh Circuit cited in support of its opinion *The Trenton*, 4 F. 657 (E.D. Mich. 1880), as did the District Court. The District Court, however, failed to discuss the relevant part of the *Trenton* opinion, which enumerated various ways in which an admiralty sale may be discredited. One such way is by showing, "that the court or officer making the sale had no jurisdiction of the subject-matter by actual seizure and custody of the thing sold." Id. at 661. In so doing, the District Court neglected to protect the crew member's Fifth Amendment rights, requiring notice for due process. As the district court in *United States v. Steel Tank Barge H 1651*, 272 F. Supp. 655, 660 (1967) explained, "that in in rem admiralty matters, notice satisfying due process means seizure." The necessity of the seizure of a vessel satisfying the requirement to impart notice is further explained by the Supreme Court in *The Mary*, 13 U.S. (9 Cranch) 126 (1815). The Supreme Court's decision in reference to in rem proceedings explained, "... notice of the controversy is necessary in order to become a party, and it is a principle of natural justice, of universal obligation, that before the rights of an individual be bound by a judicial sentence he shall have notice, either actual or implied, of the proceedings against him. Where these proceedings ... are in rem, notice is served upon the thing itself." Id. at 144.

The maritime liens against the Drangur, claimed by the plaintiffs-appellants, are sufficient claims valid in any U.S. District Court. Furthermore, these claims, excluding the claim for repatriation costs, are of the highest priority in American courts with respect to maritime liens. The Supreme Court has declared that, "Seamen's wages ... are sacred liens, and, as long as a plank of the ship remains, the sailor is entitled, against all other persons, to the proceeds as a security for his wages." *The John G. Stevens*, 170 U.S. 113, 119 (1898). Congress has further protected seamen's wages, maintenance and cure, and expenditures on supplies and other necessities to vessels, through 46 U.S.C. §10313 (f)-(i), 31342.

Analysis of the general rule for burdens of proof, exposes the district court's error in upholding Utvegsbanki's affirmative defense that their purchase of the Drangur was free and clear of all liens. The general rule states that, "one who asserts the existence of a fact, material to an issue in a case, assumes the burden of proof." *Superior Oil Co. v. Devon Corp.*, 458 F.Supp. 1063 (1978) "This rule extends to affirmative defenses," Id. at 1063.

In light of this, the court of appeals vacated the district court's grant of summary judgment to defendants-appellees and remanded the case to the district court for further factual findings and proceedings.

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